IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

TEJINDER SINGH,

* 4:04-cv-90469

Plaintiff,

v.

*
WELLS FARGO HOME MORTGAGE.,

Defendant.

* MEMORANDUM OPINION

* AND ORDER

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Before the Court is Plaintiff's Motion to Dismiss the Notice for Removal and for Remand to Iowa State District Court. Clerk's No. 7. Defendant originally filed its Notice of Removal, pursuant to 28 U.S.C. section 1441, on August 27, 2004. Clerk's No. 1. At that time, due to the vague assertion of federal subject matter jurisdiction, this Court issued an Initial Review Order asking that Defendant amend the removal notice and clearly state on what basis this Court has subject matter jurisdiction. Clerk's No. 3. Defendant amended the notice of removal on September 13, 2004, and asserted federal subject matter jurisdiction under 28 U.S.C. section 1332—diversity jurisdiction. Defendant stated that Plaintiff was seeking a minimum of two years lost wages, which exceeds the \$75,000 jurisdictional requirement under the statute. To support this assertion, Defendant submitted an affidavit stating that Plaintiff's annual salary at the time of dismissal was \$59,900. Plaintiff filed the present motion to remand alleging lack of subject matter jurisdiction because Defendant failed to meet its burden of proof to support diversity jurisdiction. The matter is fully submitted.

There are two requirements to establish federal diversity jurisdiction: 1) complete diversity of the parties; and 2) an amount in controversy exceeding \$75,000. 28 U.S.C. §1332. In the present

case, the first requirement has been met. Thus, the only issue before the Court is whether the claim exceeds \$75,000. Federal courts are courts of limited jurisdiction and "the requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception." Godfrey v. Publitzer Pub. Co., 161 F.3d 1137, 1141 (8th Cir. 1998). "The district court has subject matter jurisdiction in a diversity case when a fact finder could legally conclude, from the pleadings and proof adduced to the court before trial, that the damages that the plaintiff suffered are greater than \$75,000." Kopp v. Kopp, 280 F.3d 883 (8th Cir. 2002) "When a defendant removes an action to federal court, such defendant has the burden of showing that the federal court has jurisdiction." Adams v. Bank of Am., N.A., 317 F. Supp. 2d 935, 940 (S.D. Iowa 2004) (quoting *Bor-Son Bldg., Corp. v. Heller*, 572 F.2d 174, 182 n.13 (8th Cir. 1978)) (citing McNutt v. Gen. Motors Acceptance Corp. of Ind., 298 U.S. 178, 189 (1936); Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. 990C80656 v. Amoco Oil Co., 883 F. Supp. 403, 407 (N.D. Iowa 1995)). "The Court must resolve all doubts about federal jurisdiction in favor of remand." In re Bus. Men's Assur. Co. of Am., 992 F.2d 181, 183 (8th Cir. 1993).

"First, the court must determine whether the complaint is removable on its face; and second, if the complaint is not removable on its face, the court must provide the parties with the opportunity to satisfy the court as to the amount in controversy." *Weimers v. Good Samaritan Soc'y*, 212 F. Supp. 2d 1042, 1045 (N.D. Iowa 2002) (citing *McCorkindale v. American Home Assur. Co/A.I.C.*, 909 F. Supp 646, 653-55 (N.D. Iowa 1995)). Determining whether the complaint is removable on its face can be a difficult question in light of Iowa pleading laws which prohibit the plaintiff from asserting a

specific amount in controversy.¹ "Thus, the allegations of the actual damages on the face of the complaint provide the court with no basis for determining the amount of actual damages in question." *McCorkindale*, 909 F. Supp. at 655. In such a case, the proponent of jurisdiction is required to show the amount in controversy requirement is satisfied by a preponderance of the evidence. *Adams*, 317 F. Supp. 2d at 942. The Court, therefore, must look at the notice of removal and additional evidence submitted by the parties.

Although it is not stated in the Petition, Defendant contends that Plaintiff is seeking nearly two years of back pay based on the date Plaintiff was terminated, November 16, 2002, and the date the Petition was filed, August 3, 2004. At the time of termination, Plaintiff earned an annual salary of \$59,900. Plaintiff's Petition seeks the following damages under Iowa state law: back pay, seven months severance pay, accrued vacation time, accrued interest, attorney fees, court costs, and emotional distress damages. The \$75,000 jurisdictional requirement would be met if Plaintiff was seeking back wages from the date of termination to the present, but nowhere in the Petition does it state that such damages are sought or would be available under Iowa law. The Petition does reference a seven month severance package Plaintiff claims he is entitled to which totals approximately \$35,000, but this amount is well below the jurisdictional requirement. Defendant's conclusory statement that Plaintiff is seeking two years back wages is not supported by the language of the Petition nor by Iowa law and "removal cannot be based simply upon conclusory allegations." *McCorkindale*, 909 F. Supp.

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¹ Iowa Rule of Civil Procedure 1.403(1); ". . . except in small claims and cases involving only liquidated damages, a pleading shall not state the specific amount of money damages sought but shall state whether the amount of damages meets applicable jurisdictional requirements for the amount in controversy."

at 656 (citing *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995)); *see also Kopp*, 280 F.3d at 885 (stating that the claim must be legally recoverable not merely alleged). Further, Plaintiff's Reply to Defendant's Resistance brief states that the amount in controversy does not exceed \$75,000. Clerk's No. 13.² Defendant's conclusory statement that, "The minimum value of Plaintiff's alleged damages at the time of filing exceed \$100,000 based upon his annual salary times the 1.75 years since he separated from WFHM," is not supported by the evidence before this Court.

In conclusion, both parties have been given the opportunity to submit evidence regarding the amount in controversy and, based on the Petition and the evidence submitted, Defendant has not shown by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional amount.

Accordingly, Plaintiff's motion to remand this action to state court (Clerk's No. 7) is GRANTED.

IT IS SO ORDERED.

Dated this 29th day of November, 2004.

Nobert W. Pratt ROBERT W. PRATT U.S. DISTRICT JUDGE

² Federal subject matter jurisdiction attaches at the time the original complaint is filed and "[e]vents occurring subsequent to the institution of the suit which reduce the amount recoverable below the statutory limit do not oust jurisdiction." *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938). However, Plaintiff's reply refers only to the original claim and does not appear to be an assertion that he is now seeking lesser damages to escape federal jurisdiction. The issue before the court remains whether federal subject matter jurisdiction attached to this claim at the original filing or upon removal to federal court.